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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

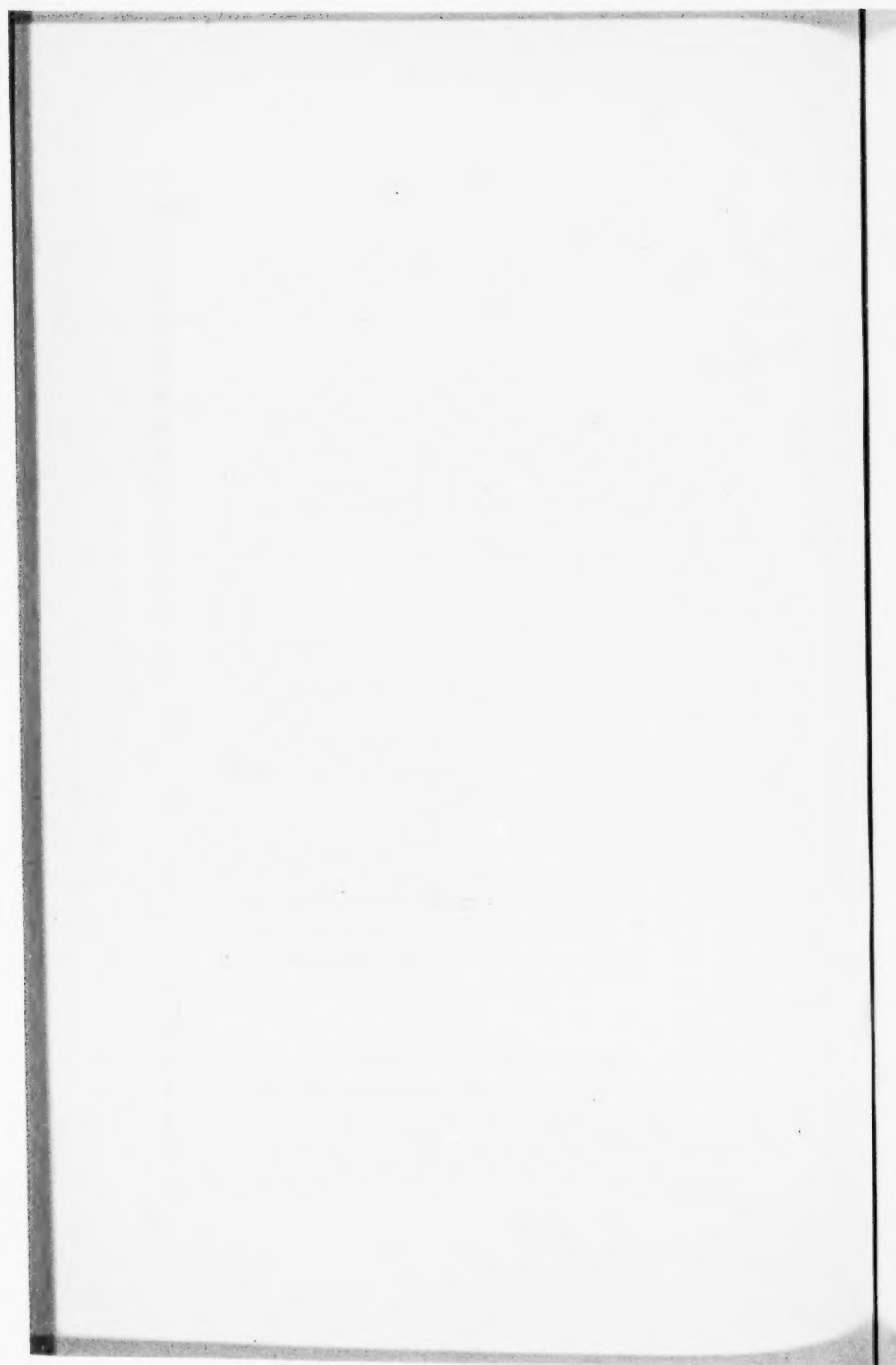
No. 442

ARON ROSENSWEIG AND ABE ROSENSWEIG,
Petitioners,
vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT AND BRIEF IN SUP-
PORT OF PETITION.

JOHN W. PRESTON,
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**PETITION FOR WRIT OF CERTIORARI TO THE
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*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioners, Aron Rosensweig and Abe Rosensweig, appellants below (R. 22-51, 123-137) respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled case (R. 137) on the 30th day of June, 1944. A rehearing was denied by that Court (R. 138) on the 2nd day of August, 1944, and the judgment of said Court is final.

Opinions Below.

The United States Circuit Court of Appeals for the Ninth Circuit rendered one opinion in the case (R. 125-

134), and Circuit Judge Mathews rendered an opinion concurring in the result (R. 135-136), which opinions are not yet reported.

Jurisdiction.

The judgment of the United States Circuit Court of Appeals for the Ninth Circuit was entered on the 30th day of June, 1944 (R. 137).

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 347(a)).

Statutes and Regulations Involved.

The case involves the Emergency Price Control Act of 1942 (Act of January 20, 1942, 56 Stat. 23, 50 U. S. C. A. Appendix, Supp. II, Section 901, *et seq.*), as amended by the Act of October 2, 1942 (56 Stat. 765, 50 U. S. C. A. Appendix, Supp. II, Section 961, *et seq.*) and Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) purporting to be issued thereunder on December 10, 1942.

Copies of applicable portions of the Emergency Price Control Act as amended and of Revised Maximum Price Regulation No. 169 are contained in the Appendix hereto.

Statement of the Case.

The petitioners seek a review of the judgment of the Circuit Court of Appeals for the Ninth Circuit (R. 137), which affirmed judgments of conviction against the petitioners in the District Court of the United States within and for the Central Division of the Southern District of California (R. 17-20) under an information (Count One) charging petitioners with making a sale of "one side of U. S. Grade A beef weighing 296 pounds" at a price in excess of the Maximum price prescribed under Revised

Maximum Price Regulation No. 169, as amended (R. 3-4).

The petitioners demurred to the information filed against them (R. 11-12) in the District Court upon the ground, *inter alia*, that said information failed to state facts sufficient to constitute an offense against the United States or the laws thereof, which demurrer was overruled (R. 14) and this action of the trial court was assigned as error in the Circuit Court of Appeals for the Ninth Circuit (R. 115-116).

The petitioners also assigned as error in the Circuit Court of Appeals the action of the trial court in refusing to adjudge that Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381) as amended "is invalid because: (a) It wrongfully fails to establish maximum prices for livestock as an agricultural commodity" (R. 117, Assignment 7). In this connection the petitioners alleged that a side of beef is an agricultural commodity, and not a processed meat or product; that Section 3(e) of the Emergency Price Control Act of 1942 as amended requires the approval by the Secretary of Agriculture of all Price Regulations relating to agricultural commodities; that Revised Maximum Price Regulation No. 169 was not approved by the Secretary of Agriculture, or by the War Food Administrator, as required by the Act; and that said Regulation, lacking such approval, is void on its face, and hence that the information does not charge petitioners with an offense against the laws of the United States.

The Circuit Court of Appeals, in affirming the convictions, held that:

"There is nothing on the face of the Regulation to indicate that the Secretary of Agriculture has not approved it, and there is no requirement that it appear on the face of the Regulation that such approval has been had. It may or may not have been approved, but that is not here pertinent for we are of the opinion that

appellants' claim that the Regulation did not become enforceable is no more than a claim that the Regulation is invalid. * * * The district court and this circuit court of appeals have no jurisdiction to consider the contention that the Regulation is invalid. *Yakus v. United States*, Case No. 374, decided by the Supreme Court March 27, 1944, — U. S. —" (R. 131).

The Questions Involved.

The principal questions here involved are:

1. Whether Section 204(d) of the Emergency Price Control Act of 1942 as amended (50 U. S. C. A. App. Section 924(d)) precludes a defendant from challenging by way of defense in a criminal prosecution the enforceability of a Price Regulation that is void on its face because it was not approved by the Secretary of Agriculture as required by Section 3(e) of the Act (50 U. S. C. A. App. Section 903(e)).

2. Whether, if Section 204(d) of the Act (50 U. S. C. A. App. Section 924(d)) does not preclude such a challenge, the court below erred in affirming the judgments of conviction against the petitioners rendered by the district court (R. 17-20).

Specification of Errors.

1. The errors assigned in the court below (R. 115-119) and more especially Assignments Nos. 1, 4, 6 and 7, are relied on here.

2. The court below erred in holding that Section 204(d) of the Emergency Price Control Act (50 U. S. C. A. App. Section 924(d)) precluded petitioners by way of defense herein from challenging the enforceability of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381) which, as to agricultural commodities, is void on its face.

3. The court below erred in holding that neither it nor the district court had jurisdiction to consider the enforce-

bility of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381) under Section 204(d) of the Emergency Price Control Act (50 U. S. C. A. App. Section 924(d)).

Reasons Relied on for the Allowance of the Writ.

The writ of certiorari herein prayed for should be allowed by this court for the following reasons:

1. The court below has decided an important question of federal law in a way probably in conflict with the applicable decisions of this Court.

2. The court below has decided an important question of federal law which has not been, but should be, settled by this Court.

3. The court below has incorrectly construed and applied the decision of this Court in *Yakus v. United States*, — U. S. —, 88 L. Ed. (Adv. Op.) 653, by holding that neither the court below nor the district court has jurisdiction to consider the enforceability of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381) which, insofar as agricultural commodities are concerned, is void on its face.

4. This Court should clarify its decision in *Yakus v. United States*, — U. S. —, 88 L. Ed. (Adv. Op.) 653, by deciding whether Section 204(d) of the Emergency Price Control Act (50 U. S. C. A. App. Section 924(d)) precludes a defendant from challenging by way of defense to a criminal prosecution the enforceability of a Price Regulation that is void on its face.

WHEREFORE, Petitioners pray that a writ of certiorari be issued by this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify to this Court for its review a transcript of

the record in case numbered and entitled on its docket 10,540, Aron Rosensweig and Abe Rosensweig *vs.* United States of America, and that the judgments of the Circuit Court of Appeals for the Ninth Circuit be reversed, and that petitioners have such other and further relief as may be proper.

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